Subsections (3) and (4) apply in circumstances where the meeting 'summoned' under sub-s (1) has in fact been 'held'. However the words '... after a meeting held pursuant to sub-s (1)' in sub-s (4) are disconcerting, as, as already observed except for the implication of a meeting being held by the use of the words 'and lay before the meeting' in sub-s (1) to hold a meeting as opposed to summoning a meeting. Further as already observed sub-s (4) is a penal provision for failure to submit a return following a meeting of creditors and as such can apply only in the event a meeting of creditors is in fact held.

The word used in sub-s (5) is 'convened' and it is used in the context of 'the liquidator has 'convened' a meeting under sub-s (1)'.

The distinction between 'summon' and 'convene' is well illustrated in *Stroud's Judicial Dictionary* at p 549 as follows:

> There is an obvious difference between 'convened' and 'summoned' ... 'convened' is applied, properly, not to individuals but, to aggregate bodies. A Board is 'convened'; an assembly is 'convened'; a senate is 'convened' but A is not 'convened', he is 'summoned, warned, or noticed' ...

Thus the words 'summon' in sub-s (1) and 'convened' in sub-s (5) have been used in their natural and ordinary meaning in that in sub-s (1) the creditors are 'summoned' to attend a meeting and in sub-s (5) the creditors' meeting is 'convened'. These two words are contra-distinguished with 'held' also used in its natural and ordinary meaning in the Act as can clearly be seen from s 176(3) where the following phrase appears:

> ... but any meeting so *convened* shall not be *held* after the expiration of 3 months from that date. (Emphasis added.)

I have little doubt that the words 'summon', 'convened' and 'held' used in s 295 are used in their natural and ordinary meanings and that the legislative intent is that once a proper notice complying in every particular with sub-s (1) read with sub-s (2) is properly served on the creditors, the provisions of the section are complied with whether or not a meeting is in fact held.

Accordingly, the applicants were entitled to the order sought that the winding-up of the company (in members' voluntary liquidation) proceed as if the winding-up were a creditors' voluntary winding-up and I so ordered. To have held otherwise would in my view have frustrated the legislative purpose and stalemated the liquidation of the company. It would not have been in the public interest generally or in the interest of the creditors of this company particularly. The consequential orders I made speak for themselves and do not call for comment.

The only apprehension I had was the failure of the liquidators to send out fresh notices when not a single creditor attended the meeting convened for 10 November 1989. However this is a procedural irregularity and not likely to cause or have caused any substantial injustice to anyone in the circumstances and so I proceeded to make the orders I did.

Order accordingly.

Solicitors: *Colin Ng & Partners.*

Reported by *Terence Tan Bian Chye*

Goh Cheng Chuan v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 38 OF 1988
THEAN J
27 JULY 1990

Criminal Procedure — Discharge amounting to an acquittal — Court's discretion to grant discharge — How discretion should be exercised — Criminal Procedure Code (Cap 68, 1985 Ed), ss 180 & 184

Criminal Procedure — Public Prosecutor, role of — Initiating and continuing a charge — Criminal Procedure Code (Cap 68, 1985 Ed), ss 184(2) & 335(1) — Constitution of the Republic of Singapore, art 35(8)

Words and Phrases — 'Unless the court so directs' — Criminal Procedure Code (Cap 68, 1985 Ed), s 184(2)

The accused faced two charges. The charges were mentioned in the subordinate courts on several occasions before finally being set down for trial on 21 April 1986. On this day, the prosecution proceeded on one of the charges. The accused was acquitted of this charge. The second charge was set down for mention on 21 May 1986. On that day the prosecution asked for an adjournment of six months as a material witness was not available. On the next mention day the prosecution asked for a further adjournment of three months for the same reason. This was granted. The case came up for mention on 2 February 1987. The prosecution asked for a discharge not amounting to an acquittal under s 184 as steps were being taken to trace the missing witness and that the prosecution had every intention of proceeding with the charge. One of the complainants had since passed away. The defence argued that the court had a discretion to direct a discharge amounting to an acquittal and should do so in this case. The court ruled that it had no discretion in the matter and was bound to order as requested by the prosecution. The accused appealed.

Held, allowing the appeal:

(1) Section 184 of the Criminal Procedure Code (Cap 68, 1985 Ed) only comes into effect if the prosecution decides not to further prosecute the accused.

(2) In ordinary cases the order of discharge under s 184 does not amount to an acquittal, but this is not because of any intention on the part of the prosecution but because of the wording of the section.

(3) Section 184 gives the court an unfettered discretion to direct in appropriate circumstances that the discharge shall amount to an acquittal, but it must be exercised judicially, taking into consideration all the relevant facts and factors placed before it.

(4) The prosecution's future intentions was only one of the factors that the court should consider in deciding whether the discharge should amount to an acquittal or not.

(5) The decision whether to prosecute an accused on a charge and whether to continue it once started is vested solely in the Attorney General as the public prosecutor. But once instituted the conduct of such proceedings is subject to the overall control of the court.

(6) Once the public prosecutor decides not to proceed further against the accused, he ought to inform the court of all the relevant matters. The court will then exercise its discretion considering the public interest in observing the right to proceed against the accused and the fairness to the accused person.

(7) It is not open to a court to invoke the per incuriam rule against a court of superior jurisdiction. The district court is bound by the decision of the High Court, even if it is per incuriam.

Cases referred to

1 *K Abdul Rasheed* v *PP* [1985] 1 MLJ 193 (folld)
2 *Baker* v *R* [1975] AC 774 (folld)
3 *PP* v *Zainuddin & Anor* [1986] 2 MLJ 100 (distd)

Legislation referred to

Constitution of the Republic of Singapore art 35(8)
Criminal Procedure Code (Cap 68, 1985 Ed) ss 177, 180, 184, 336(1)
Criminal Procedure Code (FMS Cap 6) [Mal] ss 173, 254

NS Kang (*James Joseph* with him) for the appellant.
Loke Yuen Kee for the Public Prosecutor.

Cur Adv Vult

Thean J: This is an appeal against the decision of the district judge given on 2 February 1987 in which, upon application by the prosecution, he made an order under s 184 of the Criminal Procedure Code (Cap 68, 1985 Ed) discharging the above-named appellant, such discharge not to amount to an acquittal.

The material facts that led to this appeal are briefly these. The appellant, who was a police constable in the Singapore Police Force, was first charged on 17 July 1985 with two offences punishable under s 6(a) of the Prevention of Corruption Act (Cap 241, 1985 Ed) in DAC 6932/85 and DAC 6933/85 respectively. On the same day also, one Lim Chee Leng ('Lim') was charged in DAC 6879/85 with abetting the appellant in the commission of the offence in DAC 6932/85 as well as with another offence under s 170 of the Penal Code (Cap 224, 1985 Ed) in MAC 17949/85. All these charges were mentioned in the subordinate court, Court No 26, on several occasions until 25 September 1985, when the charges in question against both of them, the appellant and Lim, were set down for trial jointly on 21 April 1986.

On 21 April 1986, before the trial commenced, counsel for Lim informed the court that Lim was not well and would have to see a doctor and accordingly sought an adjournment which was granted; the case against Lim was adjourned to 12 May 1986 for mention. The prosecution, however, applied to proceed on the charge against the appellant in DAC 6933/85 only and to have the charge in DAC 6932/85 stood down, which was also granted by the court. The trial on the first charge then proceeded. At the close of the case for the prosecution, the learned district judge found that the prosecution had failed to make out a case against the appellant, which, if unrebutted, would warrant his conviction. Accordingly, the appellant was acquitted of that charge. As for the charge in DAC 6932/85, it was set down for further mention on 12 May 1986, which was the same date the charge against Lim would be mentioned.

On 12 May 1986, the charge against the appellant in DAC 6932/856 and the two charges against Lim in DAC 6879/85 and MAC 17949/85 respectively were mentioned. The deputy public prosecutor applied for adjournment for six months on the ground that a material witness was then not available. The court was informed that efforts were being made to trace the witness and the charges were still under consideration. There was no objection to the application from counsel for the defence. Accordingly, the application was allowed and the cases were set down for further mention on 13 October 1986.

The cases against both the accused accordingly came on for mention on that day. The deputy public prosecutor informed the court that the material witness had not been traced and all efforts were being made to trace him so that the charges against both the accused could be proceeded with. In the circumstances, she applied for another adjournment for three months. This application, however, was opposed to by counsel for the accused on the ground that sufficient time had been given to the prosecution to trace the witness. Counsel submitted that it was quite obvious that the prosecution was unable to proceed against the accused at that stage; he also said that one of the complainants had died. He therefore applied for an order that each of the accused be discharged, such discharge to amount to an acquittal. The learned district judge decided in favour of the prosecution's application and adjourned the cases to 2 February 1987.

On 2 February 1987, upon the cases coming on for mention, the deputy public prosecutor applied for a discharge not amounting to an acquittal as the prosecution had still not been able to trace the material witness. She informed the court that the witness was known to have been employed in two places in Johore Bahru and efforts were being made with the assistance of the Anti-Corruption Agency of Malaysia to trace the witness and that the prosecution had every intention to proceed against both

the accused once the witness was traced and found. Counsel for the accused objected to her application on the ground that the two accused were first charged in July 1985 and since then one of them had been interdicted. He submitted that the prosecution had been given ample time to trace the witness and it would be unfair to have the charges hanging over the heads of the accused indefinitely. In effect, he urged the court to order that the discharge to be granted to each of the accused should amount to an acquittal, and he relied on the decision of Lai Kew Chai J in *K Abdul Rasheed v PP*.[1] The learned district judge rejected the submission of counsel for the accused and allowed the application of the deputy public prosecutor; he discharged both the accused, the discharge of each of them not to amount to an acquittal. Against that decision the appellant has brought this appeal.

It is common ground that when the deputy public prosecutor applied to the learned district judge for an order that each of the accused be discharged, such discharge not to amount to an acquittal, she was, in effect, proceeding under s 184 (then s 183) of the Criminal Procedure Code, which provides as follows:

> (1) At any stage of any summary trial before judgment has been delivered, the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the defendant upon the charge and thereupon all proceedings on the charge against the defendant shall be stayed and he shall be discharged from and of the same.
>
> (2) Such discharge shall not amount to an acquittal unless the court so directs except in cases coming under section 177.

However, it is to be observed that the deputy public prosecutor in invoking this section never uttered a word to the effect that she would 'not further prosecute' the accused. On the contrary, in applying for 'an order of discharge not amounting to an acquittal' she said, among other things, that 'the prosecution [had] every intention to proceed against the two accused' once the material witness was found. This ingenious move, it seems to me, was adopted to obviate the difficulty which was considered to be faced by the prosecution in *Abdul Rasheed*.[1] Such a move is undesirable, as it is unclear and confusing. If that section is invoked, it can only operate on the basis that the prosecution 'will not further prosecute' the accused. The decision whether to prosecute or not rests entirely with the prosecution: it is for the prosecution to decide whether or not it will further prosecute the accused on the charge in question; if it so decides not to do so, it ought to inform the court in clear terms. Upon the prosecution informing the court that it will not further prosecute the accused on the charge, the section comes into operation, and by virtue of its express terms all the proceedings on the charge against the accused are stayed and the accused is discharged and such discharge shall not amount to an acquittal unless the court so directs or except in cases coming under s 177 (this section is irrelevant for the purpose of this appeal). Therefore, in an ordinary case, the order of discharge under s 184 does not amount to an acquittal. That this is the nature of the order is dictated by the express terms of the section and not by what the prosecution told the court as regards its intention on the future prosecution of the accused on the charge. The learned district judge therefore erred when he said:

> Where the public prosecutor has informed the court that he will not 'further prosecute' the accused and further makes it very clear that he intends eventually to proceed with his prosecution of the accused on the charge, it becomes not only abundantly clear that the order discharging the accused shall not amount to an order of acquittal as well but a course that cannot be countermanded.

His reasoning is based on the role played by the public prosecutor as provided in s 336(1) of the Criminal Procedure Code and art 35(8) of the Constitution of the Republic of Singapore. Section 336(1) provides:

> The Attorney General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code.

and art 35(8) of the Constitution provides:

> The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

With respect, I do not see the relevance of these provisions on the operation of s 184 of the Criminal Procedure Code and on the nature and effect of an order of discharge made under that section. What the prosecution informs the court as regards its future prosecution of the accused on the charge in question is, of course, relevant — the prosecution should so inform the court — but such information forms part of the material for the court to consider whether it should, pursuant to s 184(2), exercise its discretion and order that the discharge shall amount to an acquittal.

I now turn to s 184(2) of the Criminal Procedure Code and, in particular, the construction of the words, 'unless the court so directs'. The learned district judge took the view that these words do not confer on the court an unfettered discretion and that the exercise of such discretion is limited or restricted to broadly two categories: first, where the prosecution specifically withdraws the charge or has signified its consent to the acquittal of the accused on the charge and, secondly, those instances as provided in s 180 (then s 179) of the Criminal Procedure Code where the court finds that no case has been made out against the accused: s 180(f); or that the charge against the accused is groundless: s 180(g); or that the charge has not been proved: s 180(n)(i). He said:

> Do the words, namely, 'unless the court so directs', mean that whatever has been conveyed to the court by the public prosecutor at any stage of a proceeding, including a representation that he has every intention to keep alive and continue

with the prosecution of an accused person on a future date, the court would still be empowered to disregard such an intimation and still order an acquittal? It is my view that this recourse was not intended by the legislature to be made available to a court when it employed those words in s 183(2) of the Code (Cap 113, 1970 Ed). For one thing, if it were so intended, this would be tantamount to permitting a whittling down of the authority and powers of the Attorney General as the public prosecutor, which are enshrined in the Constitution and further explained in the Criminal Procedure Code. Nothing in the Code can diminish the provisions contained in the Constitution. What then do those words convey? To understand its import one must look to the Criminal Procedure Code as a whole and, in particular, to those provisions which empower a court to acquit an accused person who appears before it in a summary trial.

The learned district judge then referred to various specific situations, where the court is empowered to order an acquittal of an accused, namely, (i) the situations provided in s 177 and in paras (f), (g) and (n)(i) of s 180 of the Criminal Procedure Code, and (ii) the situations where the public prosecutor pursuant to s 184 of the Criminal Procedure Code informs the court that he will not further prosecute the accused on the charge and, in addition, formally withdraws the charge or invites the court to make an order of acquittal, and he continued:

It is my view that the power invested in a court by s 183(2) of the Code (Cap 113, 1970 Ed), whereby it may direct that an order discharging an accused person (made pursuant to a representation by the prosecution that it will not further prosecute the accused person) shall also amount to an acquittal, is not a power given carte blanche but one that is limited by the provisions of the Code where they specifically empower a court during a summary trial to order the acquittal of an accused person on a pending charge. These instances, which have been enumerated earlier, may then broadly be summarized into two categories, namely, where, firstly, the public prosecutor in effect specifically withdraws the charge or has signified his consent to the acquittal of an accused person, and secondly, where, after evidence has been made available to a court, the charge is found to be groundless or has been rebutted. There are no instances where the Code provides for a court, on its own volition, without hearing any evidence whatsoever, with the power to acquit an accused on a pending charge. If no evidence on a charge is immediately forthcoming, a court can only acquit the person who is so charged where the prosecution formally withdraws the charge or represents to the court that it has no evidence to offer in support of it and invites the court to order an acquittal.

The learned district judge therefore gave to the words, 'unless the court so directs', a limited and narrow construction: in his view, having regard to the role of the public prosecutor under the Criminal Procedure Code, the exercise of the discretion as conferred by those words is confined to the specific instances indicated by him, and his conclusion on this point is as follows:

It is in that context that the phrase 'unless the court so directs', as it is used in s 183(2) of the Code (Cap 113, 1970 Ed) must be read. It has the discretion to consider the various options open to it and, depending on the stages of the proceedings, decide whether the facts and circumstances of the case empower it to decide in favour of ordering that the order of discharge shall amount to an acquittal as well, but not otherwise. If the case is such that it does not come within any of the instances and situations referred to earlier (in para 9.2 of these grounds), the court is given no option but to allow the order of discharge to remain as that, and nothing more.

Before I deal with the construction of s 184, I wish to make one observation. I entirely agree with the proposition that whether to prosecute an accused on a charge, and, after the commencement of the prosecution, whether to continue it, are matters solely for the public prosecutor to decide. Article 35(8) of the Constitution and s 335(1) of the Criminal Procedure Code vest in the Attorney General, as the public prosecutor, all such powers. There is clearly no dispute on this point. However, once he has instituted criminal proceedings against an accused on a charge and the proceedings are before the court, the conduct of such proceedings is subject to the overall control of the court. If a question in issue arises — whether one of fact or of law — then it is undoubtedly for the court to determine; indeed, the court is under an obligation to determine it. In determining such a question, including, where appropriate, exercising its discretion, if any, conferred by law, whether against the public prosecutor or otherwise, the court is not 'whittling down' the authority and powers of the Attorney General as the public prosecutor.

I now revert to s 184(2) of the Criminal Procedure Code. With respect, I am unable to agree with the learned district judge on the limited and narrow construction he placed on the words, 'unless the court so directs', in s 184(2). The words are unambiguous and clear, and effect must be given to them: they give to the court an unfettered discretion to direct, in appropriate circumstances, that the discharge shall amount to an acquittal. Section 184 subsists independently on its own, and its scope or operation is not limited by s 180 or other provision of the Criminal Procedure Code. There is therefore no justification for holding that the court can only exercise such discretion in the instances enumerated in s 180 of the Criminal Procedure Code or when the prosecution informs the court that it will not further prosecute the accused and, in addition, formally withdraws the charge against the accused or has signified its consent to an acquittal of the accused.

Where prosecution has been instituted against an accused on a charge, the decision whether or not to prosecute further the accused on the charge is one for the public prosecutor to make. Once he has made the decision not to prosecute the accused further, he ought in conformity to that section to inform the court of his decision and s 184(1) comes into operation. For the purpose of s 184(2) he ought further to inform the court of all relevant matters, for example, as in this case, the difficulty of tracing a material witness and his intention as to the likelihood of future prosecution of the accused on the charge. It is then for the court to decide whether it should direct that the

discharge shall amount to an acquittal. The court is vested with a discretion by the express terms of this section and that discretion is, in my opinion, unfettered; but, of course, it must be exercised judicially, taking into consideration all the relevant facts and factors placed before it, including the intention of the public prosecutor as to the future prosecution of the accused on the charge. That, in substance, is how the section operates.

I am in complete agreement with what Lai Kew Chai J said in *Abdul Rasheed*[1] at p 195:

> Subsection [184(2)] begins with proposition of law that such discharge shall not amount to an acquittal, followed by the crucial words 'unless the court so directs ...'. I need not refer to the cases coming within s 176 of the Code as they are irrelevant for present purposes. These crucial words plainly confer on the court the discretionary power to direct an acquittal and the power arises the moment the prosecution informs the court that it is not going on with the prosecution of the defendant upon the charge, whether or not the prosecution has decided forever to withdraw the charge.
>
> If an accused applies for a discharge amounting to an acquittal, a court must bear in mind that the legislature has in the opening words of sub-s [184(2)] set down the principle that the discharge 'shall not' amount to an acquittal. There must be circumstances in the proceedings so far on record or the accused must show sufficient reasons to displace the principle that the discharge shall not amount to an acquittal. In exercising its power under sub-s [184(2)] of the Code, a court must bear in mind and give due regard to the right of the prosecution to proceed at a later stage: *Seet Ah Ann* v *PP* [1950] MLJ 293. On the other hand, there is ample persuasive authority for the proposition that unless some good ground is shown it would not be right to leave an individual saddled with a charge in which proceedings are stayed for an indeterminate period: see *Goh Oon Keow* v *Rex* [1949] MLJ 35, the dicta of Mr Justice Spenser-Wilkinson in *PP* v *Suppiah Pather* reported in the Editorial Note to *Arifin bin Cassim Jayne* v *PP* [1953] MLJ 126 which were approved in *Koh Teck Chai* v *PP* [1968] 1 MLJ 166, 167, by Ong Hock Sim J (as he then was). It is not desirable to set down any principle which a court must follow when acting under sub-s [184(2)] of the Code as if it is writ in stone and thereby fetter the discretion of the court which has to be judicially exercised. Circumstances do vary from case to case. Each case has to be dealt with on its merits, with the court bearing in mind the public interest and the right of the individual to which I have alluded.

In the instant case, unfortunately, the learned district judge declined to follow the decision of Lai Kew Chai J in *Abdul Rasheed*[1] and it is best to set out his reasons verbatim:

> What was evidently not canvassed nor brought to the attention of his Lordship in that case was the role and the responsibility of the Attorney General, as the Public Prosecutor, over the institution, the conduct and the continuance, or otherwise, of all criminal prosecutions in Singapore. Neither was it brought to the attention of his Lordship of the specific instances and situations provided for in the Criminal Procedure Code in which a court, in a summary trial, may order the acquittal of an accused person on a pending charge in a summary trial.
>
> It is, with respect, my view that had these points (referred to in the preceding paragraph) been referred to and fully argued in that appeal before his Lordship, Lai Kew Chai J, the resulting judgment may not have been as it is now reported.

In effect, the learned district judge was saying that the decision of Lai Kew Chai J was arrived at per incuriam. With respect, the learned district judge was in error. First, it is not open to a court to invoke the per incuriam rule against a court of superior jurisdiction. In *Baker* v *R*[2] at p 788, Lord Diplock in delivering the judgment of the Board said:

> Strictly speaking the per incuriam rule as such, while it justifies a court which is bound by precedent in refusing to follow one of its own previous decisions (*Young* v *Bristol Aeroplane Co Ltd* [1944] KB 718), does not apply to decisions of courts of appellate jurisdiction superior to that of the court in which the rule is sought to be invoked: *Broome* v *Cassell & Co Ltd* [1972] AC 1027. To permit this use of the per incuriam rule would open the door to disregard of precedent by the court of inferior jurisdiction by the simple devise of holding that decisions of superior courts with which it disagreed must have been given per incuriam.

Hence, assuming that Lai Kew Chai J's decision was given per incuriam, it is still incumbent on the learned district judge to follow that decision and it is clearly not open to him to take the course which he did. There is no question that that decision is binding on him. Secondly, in my opinion, Lai Kew Chai J's decision was not given per incuriam: the learned judge was clearly aware of the role played by the public prosecutor and also the provision of s 180 of the Criminal Procedure Code. He was of the opinion that the discretion under s 184(2) is unfettered; he considered that the provision of s 180 was irrelevant for the purpose and in exercising his discretion he was fully aware of the role of the public prosecutor: see his judgment at p 105, second column.

I now turn to the decision of the Supreme Court of Malaysia in *PP* v *Zainuddin & Anor*[3] relied upon by the learned district judge and also by the deputy public prosecutor before me. In that case, two accused were charged on 9 November 1976 and the case had been postponed, since then, no less than 12 times to a date when the learned magistrate ordered their acquittals. Of the postponements, five were granted at the prosecution's request and two were granted owing to the court's inability to hold the trial, whilst the remaining five postponements were granted at the request of the defence. The prosecution asked for a revision of the decision of the learned magistrate, but the application was turned down. Upon application by the prosecution, leave was granted by the Supreme Court to have the following question determined, namely: whether a magistrate in conducting a summary trial could acquit and discharge the accused without hearing evidence from the prosecution at all, and the question really turned on the construction of s 173 of the Malaysian Criminal Procedure Code (FMS Cap 6), which is in pari materia with

s 180 of our Criminal Procedure Code. The Supreme Court held that in a summary trial a magistrate court under paras (c) and (f) of s 173 (which paragraphs are in pari materia with paras (c) and (f) respectively of s 180) had no power to order a discharge amounting to an acquittal of an accused person without hearing evidence of the prosecution. That is not a decision on the provision of the Malaysian Criminal Procedure Code corresponding to section 184 of our Code. The corresponding provision in the Malaysian Criminal Procedure Code is s 254 which is somewhat different. It provides:

> (i) At any stage of any trial, before the delivery of judgment, or in the case of a trial by jury before the return of the verdict, the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the accused upon the charge and thereupon all proceedings on such charge against the accused shall be stayed and the accused shall be discharged of and from the same.
>
> (ii) At any stage of any trial before a Sessions Court or the Court of a Magistrate before the delivery of judgment, the officer conducting the prosecution may, if he thinks fit, inform the Court that he does not propose further to prosecute the accused upon the charge, and thereupon all proceedings on such charge against the accused may be stayed by leave of the Court and, if so stayed, the accused shall be discharged of and from the same.
>
> (iii) Such discharge shall not amount to an acquittal unless the Court so directs.

Hence, that decision is of no assistance to me.

I now turn to examine the facts before me and consider whether in the circumstances I should exercise my discretion and direct that the discharge shall amount to an acquittal. The charge in question was brought in July 1985 and relates to an offence alleged to have taken place in December 1983. The case was set down for trial on 21 April 1986. On that day, it was stood down pending the trial of the appellant on the charge in DAC 6933/85. On that trial, the appellant was acquitted without defence being called. The charge in DAC 6932/85 was then set down for further mention on 12 May 1986. There followed two postponements: one from 12 May 1986 to 13 October 1986 and the other from the latter date to 2 February 1987. On both occasions, the postponement was requested by the prosecution on the ground that a material witness was not available, and efforts were being made to trace such a witness. On 2 February 1987, the witness still could not be traced. Even at the hearing before me, ie on 31 May 1990, I was informed by the deputy public prosecutor that the position remained as it was: the material witness was still not available and could not be traced. There was also the information, which was communicated to the district judge on 2 February 1987 and which was not disputed by the prosecution, that one of the complainants had passed away. Up to this date, approximately five years have elapsed since the charge was first brought against the appellant, and the charge relates to an offence alleged to have taken place some six and a half years ago. Clearly, the prosecution has had ample time to trace this witness, and the witness still cannot be found, notwithstanding the efforts made; the prospect of tracing this witness does not appear to have improved. The deputy public prosecutor informed me that the prosecution intended to proceed with the charge against the appellant and the charge would be proceeded with the moment the witness is found. However, this has been the position since the charge was first brought. While I accept that the charge against the appellant is a serious one and that the right of the prosecution to proceed against the appellant on the charge should be preserved, I also have to bear in mind that it is unfair to have a charge hanging over his head indefinitely. The court has to consider both public interest and fairness to an accused person, and having regard to both these factors and all the relevant circumstances of this case it is only fair to the appellant that the charge should not be left hanging over his head any longer. In my judgment, the discharge should amount to an acquittal, and I so order. The appeal is therefore allowed.

Appeal allowed.

Solicitors: *NS Kang.*

Reported by *S Surenthiraraj*

Schindler Lifts (Singapore) Pte Ltd v People's Park Chinatown Development Pte Ltd (In Liquidation)

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 832 OF 1988
LAI KEW CHAI J
15 JUNE 1990

Contract — Supply and installation of materials — Materials installed but not commissioned — Agreement to defer payment — Whether materials became fixtures — Whether property had passed — Privity of contract

Personal Property — Chattel — Whether had become fixtures — Right of owner of chattel to retake possession — Rights subject to terms of contract

The plaintiffs entered into a sub-contract with the main contractors of a development project to supply and install lifts and escalators. The sub-contract provided that the conditions of the sub-contract were supplemental to the main contract entered into between the defendants (the developers) and the main contractors. In the meantime, by a letter dated 13 January 1983, the plaintiffs and defendants had agreed to defer payment of the goods supplied. By July 1986, the plaintiffs had delivered six lifts and 17 escalators to the development site and installed ten escalators. In April 1986, a winding-up petition was presented against the defendants, and a winding-up order made on